



IN THE  
**Supreme Court of the United States**

**October Term, 1978**

**No. 78-1823**

**TEAMSTERS LOCAL UNION NO. 30, and TOM SEVER and  
All Others Similarly Situated,**

*Petitioners,*

*v.*

**HELMS EXPRESS, INC., a Division of Ryder Truck Lines,  
and the EASTERN CONFERENCE OF TEAMSTERS,**

*Respondents.*

**On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Third Circuit.**

**BRIEF OF RESPONDENT HELMS EXPRESS,  
A DIVISION OF RYDER TRUCK LINES  
IN OPPOSITION TO PETITION FOR CERTIORARI.**

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BRIEF OF RESPONDENT HELMS EXPRESS,  
A DIVISION OF RYDER TRUCK LINES  
IN OPPOSITION TO PETITION FOR CERTIORARI.

The respondent Helms Express, a division of Ryder Truck Lines, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Third Circuit's opinion in this case.

### OPINION BELOW.

The opinion of the Court of Appeals, reproduced in the Petition for a Writ of Certiorari, is reported at 591 F. 2d 211 (3d Cir. 1978) and 100 LRRM 2421 (3d Cir. 1978). The opinion of the District Court is reported at 97 LRRM 2798 (W. D. Pa. 1978).

### STATUTORY PROVISIONS INVOLVED.

This case does not involve the application or interpretation of any constitutional provision, treaty, statute, ordinance, or regulation.

### STATEMENT OF QUESTIONS PRESENTED.<sup>1</sup>

1. Whether an award of a joint labor/management grievance committee, which was contractually obligated to settle disputes presented to it, permitting the prospective implementation of a productivity measurement program by an employer drew its essence from the collective bargaining agreement.

2. Whether the conclusory allegations of the local union's Complaint seeking to set aside and vacate an arbitrator's award, to the effect that a productivity measurement program enacted by an employer was unreasonable and in violation of the collective bargaining agreement, must be taken as admitted on a motion to dismiss the Complaint under F. R. Civ. P. 12(b)(6).

1. As discussed *infra*, the Petition for a Writ of Certiorari in this case did not set forth the questions presented for review, in violation of Rule 23(1)(c) of this Court's Rules. The Statement of Questions Presented herein is therefore based upon inferences drawn by Respondent from the arguments in the Petition and the opinion of the Third Circuit below.

### STATEMENT OF THE CASE.

Petitioner Teamsters Local 30 is a labor organization and is the sole and exclusive bargaining representative of the individuals employed as dock workers at the Irwin, Pennsylvania freight terminal of Respondent Helms Express. Helms Express is a common freight carrier certified by the Interstate Commerce Commission. Respondent Eastern Conference of Teamsters is a subordinate body of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America composed of Teamster unions from the eastern sector of the United States.

Petitioners' Complaint in the district court sought to set aside and vacate a final and binding decision of the Eastern Conference Joint Area Committee, a joint union/management committee established by the collective bargaining agreement for the resolution of grievances and disputes under that agreement. The decision of the Conference, as discussed below, upheld the implementation of a productivity measurement program by Helms.

The relationship between Helms and Local 30 was governed at the time the instant litigation arose by the National Master Freight Agreement and the Joint Council No. 40 Local Cartage Supplemental Agreement<sup>2</sup> for the period April 1, 1976 to March 31, 1979. The NMFA is a product of multi-employer bargaining between trucking employers and the Teamsters National Freight Industry Negotiating Committee, which represents local unions, including Local 30, affiliated with the International Brotherhood of Teamsters.

2. The National Master Freight Agreement and the Local Supplement will be referred to collectively herein as the "NMFA." Although the contract governing the instant litigation expired on March 31, 1979, the provisions of the contract referred to herein were included in the subsequent contract without change.



Article 45 of the NMFA creates two joint area grievance committees, known as the Western Pennsylvania Teamsters and Employers Joint Area Committee ("WPJAC") and the Eastern Conference Joint Area Committee ("ECJAC"), consisting of delegates of the local unions and the employers from the Western Pennsylvania Eastern Conference Area respectively. Under Section 3 of Article 45 these two committees are charged with the responsibility of settling disputes which cannot be settled between the employer and the local union in the earlier stages of the grievance machinery. Matters which are deadlocked through the WPJAC, with the exception of discharge cases, are referred to the ECJAC. A decision rendered by the ECJAC is expressly made final and binding upon the parties, with no right to further appeal, both under the contract and the Form submitting the grievance to the ECJAC.

The dispute in the instant matter arose over the interpretation and application of Article 20 of the NMFA. That Article reads in relevant part as follows:

The Union, its members and the employer agree at all times as fully as it may be within their power to further their mutual interests and the interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The union and the employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this agreement are best protected through efficient and productive operations of the employer and the trucking industry. The employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval of the local

union, and to be filed for approval with the Conference Joint Area Committee.

The dispute giving rise to the instant litigation concerned the implementation of a productivity measurement program by Helms Express, the Union's objection to that program, and a subsequent determination of its validity by the ECJAC.

According to the allegations of the Complaint filed in the district court, in October, 1976 Helms Express was implementing a productivity measurement program for its dock employees based upon peer comparisons. In accordance with a progressive discipline system associated with the program Petitioner Tom Sever and ten other employees were suspended without pay for low productivity. Local 30 filed grievances on behalf of each of the eleven disciplined employees, alleging that the suspensions were improper and that the productivity measurement program violated the above-quoted Article 20 of the NMFA. While the grievances were being processed Local 30 and Helms agreed that the Sever grievance would serve as a pilot grievance and that its result would control the result of the others. The grievance proceeded through the steps specified in the NMFA to the WPJAC, which was unable to reach a decision. Under the terms of the NMFA, the matter was therefore referred to the ECJAC for resolution.

On April 27, 1977 the Sever grievance was presented to a panel of the ECJAC. The decision reached by the ECJAC was as follows:

The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the pro-

ductivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further rules that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

On October 7, 1977 the action in the district court was commenced seeking to set aside and vacate the award of the ECJAC. The district court dismissed the action for failure to state a claim upon which relief could be granted, and that dismissal was affirmed by the Third Circuit Court of Appeals.

The Third Circuit held that the award of the ECJAC drew its essence from the NMFA because Article 20 invested the ECJAC with the authority to approve a local union's ratification of productivity standards. Implicit in this authority was a corresponding power to review and approve such standards in the absence of local union agreement because to hold otherwise would "vest in the local union an arbitrary, unreviewable right to disapprove productivity standards." 591 F. 2d at 216. The court further held that the award of the ECJAC decided an unforeseen problem arising out of a gap in the contract, and was thus rationally based in the contract. The award therefore drew its essence from the collective bargaining agreement and was not subject to a review on the merits by the district court.

## REASONS FOR DENYING THE WRIT.

### **I. Certiorari Should Be Denied for the Reason That the Petition in This Case Does Not Comply With the Requirements of Rule 23(1)(c) of This Court.**

Rule 23 of the Rules of this Court sets forth the matters which must be included in a Petition for a writ of certiorari. Section 1(c) of that Rule specifies that the Petition shall include a statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. That provision further states that only the questions set forth in the Petition or fairly comprised therein will be considered by the Court.

The Petition filed in the instant case does not set forth the questions presented for review, and is therefore in violation of Rule 23(1)(c). This failure to comply with the Rule is far more than a mere technical violation. The statement of the questions presented for review is an integral and necessary part of any Petition for certiorari. It permits this Court to focus specifically upon the narrow question or questions as to which the Petitioner submits discretionary review is appropriate, and permits this Court to apply the standards set forth in Rule 19 setting forth the considerations governing review on certiorari. The statement of the questions presented for review also permits the parties opposing the Petition for certiorari to narrow the focus of their arguments in opposition to the granting of the writ, and to avoid the presentation of unnecessary and extraneous factual and legal arguments to this Court.

The Rules of this Court were not drafted haphazardly; each rule has a purpose related to the efficient and effective

functioning of the Court. The Petitioners' failure to comply with one of the most basic rules of this Court, and the resulting prejudice to the Court and the respondent, fully warrants a denial of the Petition.

## II. Certiorari Should Be Denied for the Reason That the Issues Involved Are of No Great Importance to the Public.

In reaching its decision the Third Circuit considered a specific arbitration award, based upon specific factual presentations made by the respective parties in the course of the grievance procedure, and applied to those specific facts certain general principles articulated by this Court in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960) and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960). Those principles, dealing with the finality to be accorded a labor arbitrator's award, were followed faithfully, and upon the facts presented the Third Circuit concluded that the arbitrator's award did draw its essence from the collective bargaining agreement between Helms and Local 30. Moreover, in giving the same deference to the decision of the ECJAC, a joint union/management committee, as would be given to an independent arbitrator, the court faithfully followed this Court's teaching in *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Riss & Co., Inc.*, 372 U. S. 517 (1963).

As Petitioner correctly points out, the public has an important interest in seeing that the federal labor policy favoring arbitration as a means of settling industrial disputes is given full deference by federal courts. In the instant case, however, the Third Circuit clearly articulated and followed that policy. Its decision turned not upon a failure by that Court to follow the recognized and ac-

cepted principles of federal labor policy, but upon the unique facts of the case presented to it.

The Complaint filed by Petitioners in the district court referred to a specific factual grievance and to specific language of the collective bargaining agreement governing the grievance. The ECJAC held that the productivity measurement program which was described in the Complaint met all of the requirements of Article 20 of the NMFA, and permitted its implementation prospectively from the date of the award. The Third Circuit held that the award of the ECJAC properly reflected its mandate in the collective bargaining agreement to "settle disputes" referred to it. The court was therefore precluded from reviewing the award on its merits. The question presented to the Third Circuit turned almost exclusively upon the specific facts giving rise to the grievance, as articulated in the Petitioners' Complaint, and upon the somewhat unusual language of the collective bargaining agreement giving the ECJAC broad discretion to "settle disputes" rather than simply to render a decision on grievances. Thus, because of the unique factual circumstances, the outcome of the case in the court below was of importance solely to the litigants in this action. The public at large will remain unaffected by the decision of the Third Circuit, as will all other litigants, unless an almost identical situation should arise under the same collective bargaining agreement. Even in such a case, however, the litigants would be entitled to submit the matter anew to the grievance and arbitration procedure of the collective bargaining agreement, and would be entitled to an independent review of the merits of the subsequent grievance. As this Court has consistently held, it does not "grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U. S. 220, 227 (1925). Accordingly, certiorari should be denied.



### III. Certiorari Should Be Denied for the Reason That the Decision of the Court Below Is Not in Conflict With Any Decision of Any Other Circuit Court.

One of the grounds asserted in support of the instant Petition is an alleged conflict between the decision of the Third Circuit and the decision of the Sixth Circuit in *Detroit Coil Co. v. Machinists, Lodge 82*, — F. 2d —, 100 LRRM 3138 (6th Cir. 1979). Although the Sixth Circuit in *Detroit Coil Co.* reached a result different from that of the Third Circuit and refused to attribute finality to the award of an independent arbitrator, that difference in result does not establish a "conflict" between the two courts. Were that the case, few actions would not be subject to discretionary review by this Court.

As this Court has held on many occasions, a conflict between circuits which will justify discretionary review by this Court must be a real conflict on the same matter of law or fact, and not merely an inconsistency in dicta or in the general principles utilized. The conflict must be "a real and embarrassing conflict of opinion and authority between the circuit courts of appeals." *Layne and Bowler Corp. v. Western Wells Works, Inc.*, 261 U. S. 387, 393 (1923).

There is no conflict in the application of principles of law between the decisions of the Third Circuit and the Sixth Circuit. In both cases the circuit courts followed the principles of law articulated by this Court in the *Steelworkers Trilogy*.<sup>3</sup> Based on the unique facts of the respective cases, however, the courts reached differing results.<sup>4</sup>

3. *United Steelworkers of America v. American Mfg. Co.*, 363 U. S. 564 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, *supra*; *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *supra*.

4. A difference in result between cases in this area cannot of itself establish a conflict. Obviously, courts applying the identical

In *Detroit Coil Co.* the employer sought to vacate an arbitrator's award holding that, by virtue of past practice, the company had waived certain notification requirements set forth in the grievance procedure of the collective bargaining agreement. The arbitrator therefore held that the grievance was arbitrable despite the union's untimely filing of its demand for arbitration. The arbitrator ruled that the matter was arbitrable, *inter alia*, because the employer had not in the past relied upon the time limits to deny such grievances, and because the arbitrator concluded that to hold otherwise would deteriorate the existing good relations between the company and the union.

In reaching their respective decisions the Sixth Circuit and the Third Circuit each followed the principle set forth in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960), that arbitration is the favored means of settling labor disputes and that federal courts should refrain from reviewing the merits of an arbitration award. Whether or not the Sixth Circuit was correct in reaching its decision in *Detroit Coil Co.*, that decision turned upon the application of undisputed principles of law to very specific factual circumstances. The decision is clearly not in conflict on the same matter of law or fact with the decision of the Third Circuit below. As this Court has frequently held, a grant of certiorari is improper where conflicts in decisions arise from differences in states of fact, and not in the application of principles of law. See, e.g., *Wisconsin Electric Co. v. Dumore Co.*, 282 U. S. 813 (1931). The Petition for a Writ of Certiorari should therefore be denied.

#### 4. (Cont'd.)

legal principles to different factual situations may draw different conclusions as to whether an arbitration award is properly subject to a review on the merits.



**IV. Certiorari Should Be Denied for the Reason That the Decision of the Court Below Is Not in Conflict With Any Decision of This Court.**

Petitioners have urged that the decision of the Third Circuit is in conflict with the decision of this Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960). In fact, however, Petitioners are asserting no more than that they disagree with the decision of the Third Circuit insofar as it held that the decision of the ECJAC did draw its essence from the collective bargaining agreement. There is no doubt, however, that the Third Circuit applied the principles of law articulated in the *Steelworkers Trilogy*. The court analyzed the facts before it, applied those principles, and concluded that the award did draw its essence from the collective bargaining agreement. In so doing the court accepted as the starting point of its inquiry the principle that arbitration is the favored alternative forum for dispute resolution in the industrial context, *Gateway Coal Co. v. United Mine Workers of America*, 414 U. S. 368, 377 (1974), and that all doubts as to the coverage of an arbitration clause are to be resolved in favor of arbitration. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *supra* at 582-83 (1960). The fact that the Petitioners disagree with the result reached by the Third Circuit is not sufficient to establish the conflict necessary to warrant a discretionary review by this Court, and the Petition for Certiorari should therefore be denied.

**V. Certiorari Should Be Denied for the Reason That the Court Below Followed the Usual Course of Judicial Proceedings in Affirming the Dismissal of the Petitioners' Complaint in the District Court.**

As a final basis for the Petition, it is asserted that the failure of the Third Circuit to accept as true the well-

pleaded allegations of the Petitioners in their Complaint in the district court was such an egregious departure from the usual course of judicial proceedings as to justify a discretionary review by this Court. Ordinarily, however, "... an application by a District Court of the Rules of Procedure when affirmed by the Court of Appeals will not be reviewed by this Court." *Appalachian Power Co. v. Amer. Inst. of Cert. Public Accts.*, 4 L. Ed. 2d 30, 32, 80 S. Ct. 16 (1959) (per Brennan, J., as individual Justice). Rather, in cases involving questions of judicial procedure this Court has deemed certiorari to be appropriate almost exclusively in cases where matters of basic procedural policy of general application to all federal courts are involved. The instant case is not such a case.

The Petitioners assert that the court below erred in not following the principle that, on a Motion to dismiss under F. R. Civ. P. 12(b)(6), allegations of a Complaint are to be taken as admitted and the Complaint liberally construed in favor of the plaintiff. As a preliminary matter, it should be noted that this issue was not presented to the Third Circuit as an important one; rather the Petitioners stated in their Brief filed with the Third Circuit that "this point is not essential to this Court's disposition of this matter." (Petitioners' Brief, p. 12). More importantly, however, the treatment of the Petitioners' Complaint by the Third Circuit was fully consistent with the normal course of judicial proceedings, and does not "call for an exercise of this Court's power of supervision" within the meaning of Sup. Ct. R. 19(1)(b).

Specifically, Petitioners state that they alleged in their Complaint that the productivity standards enacted by respondent Helms Express were unreasonable.<sup>5</sup> This allegation

5. Petitioners also state that the Third Circuit erred in not accepting as admitted the alleged fact that Local 30 never had an

tion, it is argued, should have been taken as admitted for purposes of the respondent's Motion to Dismiss the Complaint. This allegation, however, is entirely conclusory in nature. In fact, the question of the reasonableness of the "standards" and the local union's response to the "standards" were the very matters as to which the ECJAC was called upon to render its decision. The propriety of that decision, in turn, was the very issue presented to the courts below for their determination.

Far from being contrary to the usual course of judicial proceedings, the principle is well established in federal courts that only well-pleaded material allegations of the Complaint are taken as admitted, and conclusions of law or unsupported conclusions of fact are not so taken. *See, e.g., Tamari v. Bache & Co. (Lebanon) S. A. L.*, 565 F. 2d 1194, 1198-99 (7th Cir. 1977), *cert. denied* 435 U. S. 905 (1978); *United States v. Tulare Lake Canal Co.*, 535 F. 2d 1093, 1097 (9th Cir. 1976), *cert. denied*, 429 U. S. 1121, *rehearing denied*, 430 U. S. 976 (1977); *United States v. Christian*, 505 F. 2d 94, 100 (5th Cir. 1974); *Cole v. Cardoza*, 441 F. 2d 1337, 1342 (6th Cir. 1971); *Pauling v. McElroy*, 278 F. 2d 252, 253-54, *cert. denied*, 364 U. S. 835 (1960); *Ryan v. Scoggin*, 245 F. 2d 54, 57 (10th Cir. 1957). In *dictum*, this Court has on several occasions stated that conclusions of law, or general conclusions of

##### 5. (Cont'd.)

opportunity to discuss or negotiate the productivity measurement program with Helms Express. This "fact," however, is contradicted by Petitioners' own Complaint in the district court, which includes as Exhibit "C" the decision of the WPJAC. The Exhibit sets forth the employer's position that meetings were held with Local 30 to discuss productivity and that Local 30 failed to cooperate with Helms. As this Exhibit makes clear, the grievance committees were presented with evidence concerning the refusal of Local 30 to agree to the productivity measurement program. For the courts below to have concluded otherwise would therefore have contradicted Petitioners' own pleading.

law or fact, are not "well-pleaded" allegations for purposes of a motion to dismiss. *See Newport News Co. v. Schauffler*, 303 U. S. 54, 57 (1938); *Pacific States Co. v. White*, 296 U. S. 176, 185 (1935). In discounting the conclusory effect of certain of the allegations of plaintiffs' Complaint the district court, and the Third Circuit, acted in a manner fully consistent with the usual course of judicial proceedings. The Petition for certiorari should therefore be denied.

## CONCLUSION.

As this Court made clear in the *Steelworkers Trilogy* a federal court should seldom review the merits of a labor arbitrator's award. The Third Circuit expressly followed that principle in the instant case and, on the specific facts set forth in the Complaint and on the specific language of the collective bargaining agreement, refused to disturb the award of the Eastern Conference Joint Area Committee adversely affecting the Petitioners. The decision of the Third Circuit was of importance solely to the litigants in this case, and turned on facts unique to this case. There are thus no special or important reasons favoring an exercise of this Court's discretionary power of review. Accordingly, the Petition for a Writ of Certiorari should be denied.

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## CERTIFICATE OF SERVICE.

The undersigned hereby certifies that three copies of the foregoing Brief of Respondent Helms Express in Opposition to Petition for Certiorari were served upon the following counsel for the parties to this proceeding by first class mail, postage prepaid, on July 6, 1979:

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